IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-147

BOB BULLOCK, ET AL,

Appellants,

v.

DIANA REGESTER, ET AL,

Appellees.

On Appeal from the United States District Court
for the Western District of Texas

BRIEF OF APPELLEES, VAN HENRY ARCHER, JR., ET AL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FOOTNOTES

References cited in lieu of Appendix

Appendix Jurisdictional Statement—(A.Jur.S.)

Robert Spellings' deposition—(Spellings' deposition)

C. E. Garza's deposition—(Garza's deposition)

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BRIEF OF APPELLEES

This brief is submitted on behalf of the Appellees for the Archer, et al vs. Smith, et al case filed in the San Antonio Division of the Western District of Texas originally involving both the House and Senate Redistricting Plans of the Texas Legislative Redistricting Board. The Court below decided adversely to these Appellees that portion of the case invoving the constitutionality of the Senate apportionment plan and that matter is not before this Court, however, with reference to the apportionment of the legislature, these Appellees challenged the at-arge districting scheme in the State of Texas as set out in the action of the Texas

Legislative Redistricting Board principally involving the at-large election of legislators from Bexar and Dallas Counties on several grounds, including discrimination against lower income residents of the racial and ethnic minorities located in such counties; together with the higher campaign costs required to wage a campaign in these counties which discriminated against the racial, ethnic and lower income voters and candidates.

The Appellees in the Court below represented various minority groups; Negroes, Mexican-Americans, and the Republican party. That by stipulation and agreement, and approval of the trial court below, in open court, that in the interest of time all evidence introduced by one party would be admissible by any of the other parties, in this connection since the other Appellees have filed detailed lengthy briefs on the law and facts presented to the Court below in support of the correctness of the Court below's opinion and Orders; these Appellees feel that it would prove unnecessarily burdensome on this Court to restate all of the testimony, exhibits and law as the same would only be repititious of the same facts, evidence and law herein submitted by the other Appellees, and for this reason, these Appellees adopt by reference the Appellee, Dr. George Willeford, et al, and Joe Bernal, et al, Briefs on the Merits insofar as said Appellees' Briefs apply to the Archer, et al, Appellees, F.R.A.P. Rule 28 (1) U.S.C.A.

JURISDICTION

Appellants contend that jurisdiction of this Court, if any, exists under 28 U.S.C. §1253 and 2101 (b).

QUESTIONS PRESENTED

(1.) Whether the Redistricting Board of the State

of Texas was justified in setting up single-member districts in Harris County and at-large elections in Dallas and Bexar Counties for the election of state representatives (A.Jur.S. 118C), which at-large elections favored the more prosperous candidates and those running on a "ticket" in similar metropolitan areas and whether or not such arbitrary action on behalf of the Board constituted discrimination.

(2.) Whether there was a justification shown by the Appellant in the creation of a plan in which the population deviation was 9.9% (A.Jur.S. 153C).

PROCEEDINGS IN THIS ACTION

That this action was tried before a Three-Judge Federal District Court in the Austin Division for the Western District of Texas, together with three other cases which were consolidated. The Court rendered judgement on January 28, 1972 (A.Jur.S. 1A) after an extensive trial and over a week of depositions. The Court's decision declared that the action of the Texas Legislative Redistricting Board was unconstitutional in regards to the entire legislative reapportionment plan adopted by the Board, saying that no rational state policy was shown to justify population deviation from the one-man one-vote principal. The Court further found that the at-large elections of state representatives in Dallas and Bexar Counties diluted or cancelled the voting strength of minorities in these two counties and directed that the elections in 1972 for the Texas Legislature be held under single-member districts. The Appellant herein sought a stay of the Court Order, which was denied, with opinion by Justice Powell on February 7, 1972, 405 U.S. 1201, and elections were held from single-member districts as ordered by the trial court in the last general elections

in Dallas and Bexar Counties. Probable jurisdiction was noted on October 10, 1972.

ARGUMENT

That the case of *Kirkpatrick vs. Preisler* 394 U.S. 526 (1969) requires mathematical equality and "permits only the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality or for which justification is shown." (page 535). That the above language squarely places the burden upon the Appellant to prove justfication for variances; this they failed to do in the trial of the case. The evidence showed that the entire plan was drafted by an assistant with no prior experience or training in a matter of two days (Spellings' deposition p. 26, 11. 5-21.) and which was passed by individual members of the Board at first sight in a matter of hours prior to the expiration time as set by mandate of the Texas Supreme Court (A. Jur. S. 118C). The Appellant apparently disagrees with the findings in the *Kirkpatrick* case (supra) but the fact remains that in order to draw constitutional districts which provide equal representations for equal numbers of people permitting only the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality or for which justification is shown is the judgement of the *Kirkpatrick* case. The Appellant has failed to show that a good faith effort was made to achieve absolute equality and has failed to justify any such variances. That the trial Court invited the several parties to the original suit to submit alternate plans but the State refused to submit an alternate plan.

That the adoption of a plan by the State Redistricting Board allowing singe-member districts in Harris

County (Houston) and a different system (multi-member legislative districts) for Dallas and Bexar Counties (A.Jur.S. 118C), constitutes an unconstitutional discrimination against racial and ethnic minorities and those candidates from a lower income level. That it was established in the trial court and undisputed that the geographic and demographic characteristics of Harris County were virtually identical to those of Dallas and Bexar Counties. That there was no attempt on the part of the Appellant to show any significant difference for the treatment of Harris County and that of Dallas and Bexar Counties, and it can only be concluded that the action by the Board was arbitrary and that it resulted in invidious discrimination against the racial and ethnic minorities in Dallas and Bexar Counties and those of very limited financial resources. It was shown that the representatives are much closer to their constituency in single-member districts; were more accountable to the voter and more receptive to his problems and interests in state legislation; a narrower field of interest to represent and a more responsive legislator to the demands of his constituents because of a much smaller constituency. It was shown that the expense of conducting a campaign in a multi-member district was increased considerably over that of a single-member district due to the necessity of approaching or becoming known to a large number of people due to the cost of advertising in the news media, television, radio and newspaper. That in both San Antonio and Dallas, where the (GGL,) Good Government League in San Antonio, and the (DCRG,) Dallas Citizens for Responsible Government, are largely in control of the election processes, it is almost impossible for a poorly financed candidate to run a successful campaign in Dallas or San Antonio. That the Negroes in Dallas (Weiser deposi-

tion p. 221, 13-23) and the Mexican-Americans in San Antonio (C. E. Garza deposition, p. 629, 23-25, p. 630, 1-8), in order to be put on the ticket, must conform to the ideals and be accepted by the GGL and DCRG.

That there was no justification shown by the Appellant for multi-member districts being created in Dallas and Bexar Counties while Harris County was given single-member districts and that such action resulted in invidious discrimination to the residents of Dallas and Bexar Counties as set out in the First and Fourteenth Amendments to the Constitution of the United States. That the entire action and attitude of the Texas Legislative Redistricting Board amounted to an attempt to delegate their duties and responsibilities owed to the voters of the State of Texas to a clerk for the preparation of the plan (Spellings' deposition p. 62, 1-5) with almost no supervision or control by the Board as set up by the Constitution of the State of Texas and working against a severe time element which made it practically impossible to draft a plan that would fit the guidelines as set up by this Court. That the plan which was drafted was the result of an arbitrary, whimsical and capricious disregard for the citizens and voters of the State of Texas and which failed to meet the requirements of this Court as to population deviation and with no reasonable justification for setting up single-member districts in Harris County and multi-member districts in Bexar and Dallas Counties.

CONCLUSION

For the foregoing reasons, hereinabove set out, Appellees respectfully pray that the judgement of the Court below be, in all respects, affirmed.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned, a member of the Bar of this Court, hereby certifies that a copy of the foregoing Brief of Appellees has, this ..... day of February, 1973, been served upon each counsel of record in this cause in accordance with Rule 33 of this Court, by depositing same in a United States Mail Box, Certified Mail, Return Receipt Requested, with first class postage prepaid, addressed to said counsel at their post office addresses.

J. DOUGLAS MCGUIRE